

United States Bankruptcy Court
Eastern District of Michigan Michigan - Southern

In re

Donald Pack
Kay-Lynn Pack

Debtor,

Donald Pack,

Plaintiff,

vs.

Jefferson Capital Systems LLC,

Defendant,

Mark J Van Epps p33068
attorney for Donald Pack,
318 N Water St, Owosso MI 48867
(989) 723-6777

Case No. 21-45245

chapter 7

Honorable Mark Randon

Adversary No.

**Complaint to obtain return of garnisheed and
other funds and attorney's fees purusant to
11 USC 522(h)**

Plaintiff, Donald Pack,, by and through counsel Mark J Van Epps p33068, hereby represents as follows:

- 1 The court has jurisdiction to hear this complaint pursuant to 28 USC 157(a), (b)(1), (b)(2)(F), (b)(2)(E), (b)(2)(A) (core proceedings), sec 1334(b) and 11 USC 522(h).
- 2 In addition, this is an adversary action as that term is defined in BR 7001(1).
- 3 Plaintiff is a debtor of defendant-creditor, regarding certain loans made by creditor to debtor, which loan was collected by garnishments on a judgment.
- 4 Plaintiff and debtor filed papers in support of a chapter 7 petition and commenced the above case.
- 5 Defendant obtained a judgment against plaintiff prior to filing this case.
- 6 Defendant's actions caused charges to plaintiff in the amount of \$1051 (tax refund) since the judgment was obtained from plaintiff by way of garnishments or other court ordered collection techniques during the 90 day period prior to the bankruptcy being filed.
- 7 Plaintiff made a demand from defendant to return these funds.
- 8 Any garnishments made subsequent to the case being filed would be in violation of the automatic stay of 11 USC 362, defendant garnisheed funds from the wages of plaintiff.
- 9 11 USC 362 provides upon willful violation of the stay the defendant shall pay actual damages, including costs and attorneys' fees, and in appropriate circumstances, punitive damages.
- 10 Plaintiff's attorney has executed an agreement with plaintiff prior to the commencement of the chapter 7 case in which he would be paid \$275 per hour.
- 11 Plaintiff's attorney estimates 5-10 hours of time to litigate this case or more.
- 12 See the cases of In re Johnson D CT #10-12873 (Dc Ct EDM) an appeal of 10-56634 (McIvor); In re Williams, Bank # 10-53685 EDM 8-5-2010 Shapero; Ford Motor Credit Company v Sigmon, D Ct 2001-CV-60277 Battani, J, an appeal of a Perlman case.

13 Plaintiff seeks an

- a. accounting of the funds garnisheed,
- b. a return of this approximately \$1051 (tax refund).
- c. actual damages including attorney fees, and, if appropriate, punitive damages, and
- d. actual costs.

/s/ Mark J Van Epps

Mark J Van Epps p33068, attorney for plaintiff

Dated: 7/27/2021